

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Kelly Conrad PETITIONER
(Your Name)

VS.

PENNSYLVANIA STATE — RESPONDENT(S)
Police et al

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

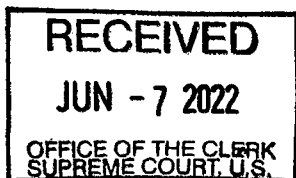
☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

Kelly Conrad
(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Kelly Conners, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Self-employment	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Income from real property (such as rental income)	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Interest and dividends	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Gifts	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Alimony	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Child Support	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>1,623.99</u>	\$ <u>NA</u>	\$ <u>1,623.99</u>	\$ <u>NA</u>
Disability (such as social security, insurance payments)	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Unemployment payments	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Public-assistance (such as welfare)	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Other (specify): _____	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
Total monthly income:	\$ <u>1,623.99</u>	\$ <u>NA</u>	\$ <u>1,623.99</u>	\$ <u>NA</u>

I AM NOT MARRIED

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
CHECKING	\$ 400.00	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home 1/2 DUPLEX
Value 70,000.00

☐ Other real estate
Value NA

☒ Motor Vehicle #1
Year, make & model 2001 CHEV SILVERADO
Value \$6,000.00

☐ Motor Vehicle #2
Year, make & model
Value

☐ Other assets
Description NA
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$ <u>NA</u>	\$ <u>NA</u>
	\$ <u>NA</u>	\$ <u>NA</u>
	\$ <u>NA</u>	\$ <u>NA</u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
	<u>NA</u>	

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	<p>THIS PAYMENT FLUCTUATES PER MONTHLY INTEREST ONLY</p> <p>\$ 100.00</p>	\$ <u>NA</u>
Are real estate taxes included?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Is property insurance included?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>338.42</u>	\$ <u>NA</u>
Home maintenance (repairs and upkeep)	\$ <u>NA</u>	\$ <u>NA</u>
Food	\$ <u>200.00</u>	\$ <u>NA</u>
Clothing	\$ <u>70.00</u>	\$ <u>NA</u>
Laundry and dry-cleaning	\$ <u>20.00</u>	\$ <u>NA</u>
Medical and dental expenses — ONLY AS NEEDED	<p>NOT MONTHLY</p> <p>\$ 110.00</p> <p>WALK IN DENTAL CLEANING EVERY COUPLE YEARS</p> <p>\$ 100.00</p>	\$ <u>NA</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>NA</u>	\$ <u>NA</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>NA</u>	\$ <u>NA</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's <u>INSURANCE</u>	\$ <u>72.76</u>	\$ <u>NA</u>
Life <u>MONTHLY</u>	\$ <u>NA</u>	\$ <u>NA</u>
Health	\$ <u>NA</u>	\$ <u>NA</u>
Motor Vehicle	\$ <u>50.58</u>	\$ <u>NA</u>
Other: <u>GAS</u>	\$ <u>40.00</u>	\$ <u>NA</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify) <u>SCOTLAND PROPERTY REAL ESTATE TAXES</u>	\$ <u>120.00</u>	\$ <u>NA</u>
<u>PUT BACK 120.00 PER MONTH</u>		
Installment payments		
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Credit card(s) <u>- 2</u>	\$ <u>120.00</u>	\$ <u>NA</u>
Department store(s)	\$ <u>NA</u>	\$ <u>NA</u>
Other: _____	\$ <u>NA</u>	\$ <u>NA</u>
Alimony, maintenance, and support paid to others	\$ <u>NA</u>	\$ <u>NA</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>NA</u>	\$ <u>NA</u>
Other (specify): _____	\$ <u>NA</u>	\$ <u>NA</u>
Total monthly expenses:	\$ <u>1,011.76</u>	\$ <u>NA</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Would Respectfully REFER TO CASE
FOR EXPLANATION

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 3, 2022

Kelly Conrad
(Signature)

No

**In The
SUPREME COURT OF THE UNITED STATES**

KELLY CONARD,

Petitioner,

V

**PENNSYLVANIA STATE POLICE; JOSEPH TRIPP, DENNIS HILE,
JOHN/JANE DOE ET AL,**

Respondents,

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

PETITION FOR WRIT OF CERTIORARI

Kelly Conard
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Williamsport, PA 17701
(843)471-7968
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Pro Se Petitioner

QUESTIONS PRESENTED

1. Did the United States Court of Appeals error by not taking the report and recommendation of Judge Carlson recommending that summary judgement for Respondent Tripp be denied?
2. Did the District Court error by not adopting the report and recommendation /case law presented by Judge Carlson in denying summary judgement for Respondent Tripp?

LIST OF PARTIES

The petitioner is a well-regarded former employee of 17 plus years of the Pennsylvania State Police. The petitioner is Kelly Conard.

The respondents are the Pennsylvania State Police, Joseph Tripp, Dennis Hile, John/Jane Doe, et al.

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APPENDIX

Opinion

On Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. No. 1-15-cv-00351 District Judge: Honorable Sylvia H. Rambo Dismissed case.....**A-1**

Order

Submitted Pursuant to Third Circuit L.A.R. 34.1(a) on October 4, 2021 Before: Greenaway, JR., Krause, and Bibas, Circuit Judges dismissed on January 6, 2022.....**A-12**

Motions requested by Petitioner

United States Court of Appeals for the 3rd Circuit.....**A-14**

Report and Recommendation

United States Magistrate Judge Martin C. Carlson.....**A-30**

TABLE OF AUTHORITIES

In the brief and reply brief of Attorney Eric Hamilton of Williams and Connolly Law Firm provided 68 pages and another 28 pages of case law that holds up and proves Petitioner's case. Thus, the reason for the remand. Attorney James L. Best then added and included the crucial pieces of evidence during discovery that proved the 1st Amendment retaliation which led to a seasoned Judge reversing his opinion and denying summary judgment for Respondent Tripp.

OPINIONS

1. On Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. No. 1-15-cv-00351 District Judge: Honorable Sylvia H. Rambo Dismissed case **(SEE APPENDIX A-1)**)

2. Submitted Pursuant to Third Circuit L.A.R. 34.1(a) on October 4, 2021 Before: Greenaway, JR., Krause, and Bibas, Circuit Judges dismissed on January 6, 2022 **(SEE APPENDIX A-12)**

JURISDICTION

This court has jurisdiction over the United States Court of Appeals for the 3rd Circuit and the United States District Court for the Middle District of Pennsylvania

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The answer to the question presented by this appeal turns on FED. R. CIV. P. 56 (c) as to the grant of summary judgment and the first amendment of the United States Constitution as to petitioner's protected speech.

FED. R. CIV. P. 56 (C)

(C) Time for a Motion, Response, and Reply; Proceedings.

(1) These times apply unless a different time is set by local rule or the court orders otherwise;

(A) A party may move for summary judgment at any time until 30 days after the close of all discovery;

(B) a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

US CONST. AMEND. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

And now this 3rd day of June, 2022 Petitioner is respectfully asking The Supreme Court of the United States to hear her case.

Petitioner is a former exemplary employee of 17 plus years of the Pennsylvania State Police (PSP) who was well regarded for by her Commanders, supervisors and coworkers and this information has been thoroughly documented by the majority of PSP personnel and this evidence has been submitted numerous times to both the District Court and the United States Court of Appeals for the 3rd Circuit.

This is a long standing case stemming from a previous case in 2006. Both cases were appealed to The United States Court of Appeals Third Circuit. The current case was remanded back to the Middle District.

The Middle District case No. 1:15-CV-351. Appeal case number No. 16-3346. Case number after the remand No. 20-3644.

Petitioner, as a Pro se litigant was offered Pro bono services for the extensive research of case law that needed to be done. Attorney Eric Hamilton of Williams and Connolly Law Firm offered his Pro bono service to Petitioner. Attorney Eric Hamilton presented the case law at the oral argument in the United States Court of Appeals for the Third Circuit. All three Judges agreed to remand the case back to the Middle District Court. Attorney Eric Hamilton advised the Appellate Court that Petitioner had been retired for 4 years as opposing counsel kept arguing that all of these issues happened while she was an

employee with PSP. The facts and evidence have proven this was not the case as Petitioner had been retired.

The 2006 case should have been heard without question.

This was all documented at the oral argument. Petitioner's speech has been protected since then as she was retired and not still employed by the PSP as was argued in the original filings. This is backed with extensive case law provided by Attorney Eric Hamilton of Williams and Connolly Law Firm. The Respondents have now retaliated against Petitioner for exercising her free speech, our United States Constitutional Law.

Petitioner then contacted Attorney James Best. Attorney James Best of Best Law Firm took Applicant's case on a contingency basis at the Middle District level and continued with discovery.

After the remand and the discovery ensued the Magistrate Judge was assigned to provide a report and recommendation for the District Judge. The Magistrate Judge who had previously ruled against Petitioner "reversed his opinion" and ruled in Petitioners favor denying summary judgement for Respondent Tripp (**SEE APPENDIX A-30**).

The District Judge dismissed the case again. With all the evidence that has been provided Petitioner believes that this Judge at this point is just being biased. Before Petitioner retired when employed by the Pennsylvania State Police (PSP) cases went in front of this particular Judge, it was common knowledge that officers were very happy with that Judge as the Judge was very pro PSP and they stood a better chance of winning their case. Petitioner feels it is great to

back the police however; at times some officers swerve from the path of duty breaking their oath and do not follow the rules/protocol of the Pennsylvania State Police (PSP) and the Pennsylvania law period. We are witnessing this in our world today. These few officers feel they are exempt from following the law themselves. Respondent Tripp falls into this category.

The Magistrate Judge notes the actions of Respondent Tripp in how he gave Petitioner Commendable and Outstanding employee performance reviews during her period of employment but then gave negative references to potential employer's years after Petitioner retired and Respondent was no longer in a position to evaluate petitioners work. Human Resources was giving the same type response contrary to the "outstanding" and "commendable" performance evaluations records on file at the time Petitioner retired.

It was no secret that the Director of Human Resources Linda Bonney previously had lived in the same area as Respondent and that Linda Bonney's husband was "on the job" the same as Respondent Tripp. The comments prove that all Respondents had been communicating together to aid Respondent Tripp in succeeding in his objective of Petitioner not being rehired with PSP as the only information Linda Bonney would have access to were the official "outstanding" and "commendable" performance evaluations documents on file up to the point of retirement.

The PSP opened a consolidated dispatch center (CDC) in the Harrisburg area. The Petitioner applied at the CDC center as that where the position vacancy was. Commander Robert Scott was the Commander over that location. The Commander, Captain Scott had known the exemplary work ethics of Petitioner as he had worked with Petitioner for many years through his many ranks. After Petitioner applied for a dispatcher position Commander Scott recruited

Petitioner to apply for a supervisory position that had just come available. The Petitioner was subsequently advised by the Commander that Petitioner would be offered a position. Petitioner was later denied the position following intervention from Respondent(s). This is explained in detail in following paragraphs.

Notably, Petitioner was not applying for a position in Montoursville as Harrisburg is 2 hours away from where Respondent Tripp worked at PSP Montoursville.

Yet, several years after Petitioner's retirement, Respondent Tripp provided negative evaluations; contrary to the prior "outstanding" and "commendable" evaluations on record at the time of retirement that Tripp and Respondent Hile signed themselves giving those ratings. This alone shows his hostility toward Petitioner. Respondent Tripp didn't even work with Petitioner. Respondent(s) Tripp worked days and Petitioner worked nights

Respondent also made negative and inflammatory comments to outside vendors that were contracted by the PSP about Petitioner.

Petitioner contacted and requested many PSP "Commanders and supervisors" to write letters of references on her behalf and those letters were placed in her file. Consistently Petitioner received favorable comments regarding her work performance and ethics. No negative references were received.

The Magistrate Judge who reversed his opinion provided case law to support his report and recommendation (SEE APPENDIX A-30).

Petitioner and her husband at the time were called to extended active duty. Petitioner's husband was granted leave but Petitioner was not. Petitioner was improperly forced to retire despite having the clause to the contrary in their binding union agreement between American Federation of State, County and Municipal Employees (AFSCME) and the PSP. This is outlined in Petitioners brief and reply brief with evidence in the sections explaining it. At the time of Petitioner departure, the (PSP) advised Petitioner that she would be reinstated upon her return.

While Petitioners husband served his military orders and living in Texas, Petitioner was hired by the Wichita County Sheriff's Office in Texas. Respondent was contacted for employment history as part of hiring process. Respondents gave Petitioner a positive reference which was in line with their evaluations giving Petitioner commendable and outstanding evaluations and a meritorious award at her 15 year mark; no doubt positively influencing the Sherriff's department decision to hire Petitioner. The Sheriff's Department conducts background investigations just as the (PSP) does. The Sheriff's Department also supplied Petitioner with their hiring procedure and that was submitted during discovery. Petitioner's supervisor at the Sheriff's Office wrote a letter of recommendation for her.

Prior to Petitioner's return from Texas, Petitioner was contacted by Commander Scott regarding the (CDC) above-mentioned dispatcher position(s) and recruiting Petitioner to apply for a "supervisory" position. The Commander obviously knowing she would be a good addition to their team at the (CDC). Petitioner applied by faxing her application to Diana Davis at Human

Resources as Petitioner was still in Texas. Petitioner also supplied a hard copy of her resume and application directly to Human Resources.

Upon Petitioners return she was scheduled an interview in January, 2005 when she and her husband returned home from the military orders. Petitioner was interviewed by the Sergeant Lambert and was advised by Commander Scott of the Consolidated Dispatch Center in Harrisburg that she "aced her interview". The Commander was aware of Petitioners work ethics as he had worked with her for many years. The Commander advised Petitioner via email to also apply for the "supervisor's position" as she was qualified for that position as well.

Around the same time, Petitioner was also contacted by Lieutenant McGee asking if she and her husband at the time of their return would consider moving to Erie, PA. There had been a vacancy there. He too had known Petitioner for years. The Lieutenant oversaw the hiring of Petitioners position and wanted to bring her on board at his station. After this commander learned of what Respondents had done to Petitioner he offered several pieces of correspondence explaining the protocol of the PSP. He too called and spoke to someone at Human Resources and was advised that Petitioner was eligible for rehire. This proves that there are only a couple of people who were involved in the discriminatory shenanigans and retaliations.

In preparation for Petitioners employment at the Harrisburg (CDC), Sergeant Lambert submitted a request, in writing, to the Bureau of Human Resources. A representative of Human Resources Dianna Davis called Sergeant Lambert and Petitioner back and advised them both she would be brought back making what she was making when she retired and that she would keep her seniority of 17 plus years, vacation and all her benefits. This was advised by Diana Davis

who works for Linda Bonney, the Director of Human Resources. This too proves that they would have had to review Petitioners employment performance history with PSP and found it acceptable before approving and reporting that information. Petitioner was advised that she would be starting sometime in March 2005, noting that Petitioner didn't need all the training that others as she had 17 plus years of experience in police dispatch.

Curiously, Petitioner's husband, who had considerably less years of state service, was not required to have a background investigation done to return to work but Petitioner did. Petitioner questioned the reason for that, but no explanation was provided. The desperate treatment was discriminatory against the Petitioner.

Notably, all this was also before Respondent Tripp knew Petitioner reapplied.

Furthermore, it had been reported to Petitioner that a male was hired without a background investigation being done. It was later learned there were also individual's that had criminal backgrounds and were hired yet Petitioner had a long term commendable prior employment history and no criminal history, Further proving Petitioner was the victim of discrimination, including gender based discrimination.

Upon their return from Texas Petitioner and her husband temporarily resided in Williamsport with Petitioner's Mother as both of them were anticipating transferring to the Harrisburg area where the position vacancy was open for Petitioner.

Petitioner met with (PSP) background investigator at (PSP) Montoursville as it was only 5 miles from where Petitioner was staying in Williamsport.

The PSP investigator advised it should only take a few minutes and that she only needed to know what Petitioner had done while she was away. Obviously working for PSP for 17 years and then working for another department both documenting Petitioners exemplary work ethics there should have been no issues. Petitioner worked for American Medical Response until a position was posted for the Sheriff's Office. The Sheriff's Office position was more in line with Petitioners work at PSP. Investigators said there were no issues in the background investigation.

Petitioner submitted her resume/application directly to Human Resources as she faxed it along with sending a hard copy. Diana Davis directly under Linda Bonney the Director at PSP Human Resources had Petitioners information at hand. Petitioner knowing the department knew Human Resources would do the processing and had access to her files.

On Petitioners resume/application to the PSP it included Commanders, supervisors and other coworkers that worked directly with and supervised Petitioner; her entire career and that knew her work ethics. The Petitioner advised the PSP background investigator to be sure and contact those listed as they could shed light on Petitioners career with PSP. Not one of them was contacted. Petitioner has called them directly to confirm. Human Resources had Petitioner's resume and application firsthand and had all their contact information and they all were still working for the (PSP). Neither Human Resources nor the PSP newly background investigator contacted any of them.

During the background interview at Montoursville, Respondent Tripp walked in on the interview. He never acknowledged Petitioner, did and about face and left in a hostile and aggressive manner. This is always been his hostile way/actions of treating Petitioner for

absolutely no reason whatsoever. From that point on, everything changed in the hiring process. We can only assume at this point that it was because Respondent Tripp took affirmative steps to prevent Petitioner's employment by contacting Linda Bonney. Neither Petitioner's prior work history, performance evaluations, nor clean criminal history had changed during the intervening years in Texas, yet Petitioner was now no longer eligible for rehire.

Petitioner later learned that the (PSP) background investigator that conducted the interview was under direct supervisory control of the Respondents.

After getting confirmation of pay rate from Human Resources and Sergeant Lambert Petitioner hadn't heard anything until Petitioner received notice from Human Resources in the mail that she was not eligible for reinstatement. Keeping in mind that prior to Respondent Tripp walking in on the background investigator interviewing Petitioner, everything was positive and proceeding until that time. What changed at Human Resources to initiate such a dramatic reversal of status?

The background investigator said there were no issues. Petitioner's official personnel file contained no negative information when reviewed by Diana Davis, and Petitioner's employment and criminal history record during the intervening years yielded no negative problems or issues. However, Petitioner received her ineligible letter from Human Resources. Obviously Respondent had contacted them after learning she was on track to be rehired. There existed no other legitimate reason evidence or documentation to support the change of status.

The Magistrate Judge has since been able to read between the lines noting Petitioner's Employee Performance reviews at time of employment were all rated in the top categories, and

the much later negative comments being made by Respondent Tripp and Linda Bonney were not documented or supported by any information on file during petitioner's employment but were documented on the negative references given by the Respondents to subsequent professional reference company conducting their reference for professional employment type positions and potential employers, long after Respondent Tripp evaluated Petitioner. The documentation was submitted during discovery and is in the brief/reply brief.

During Discovery the attorney's requested that background investigation report but amazingly the (PSP) didn't have it. This was done in 2005. However, the (PSP) had fictitious copious notes with several different writings on it dating back to 1998/1999.

All "notes" are kept in the employees personnel file for a designated period of time and then purged. Petitioner requested and received a copy of her official personnel file at the time of her forced retirement.

Petitioner took her file with her to Texas. She utilized her file when she applied to the Sheriff's Department. Those notes were obviously being prepared and inserted long after the fact for some purpose. These fictitious copious notes were done in many different writings and ink and not on any proper forms for the (PSP) and were not in her file upon her retirement. Information on those "notes" was obviously false as some conflicted with dates the Petitioner worked.

After reviewing Petitioners file and advising Petitioner that Petitioner was eligible and on track for rehire, Diana Davis advised Petitioner that 'we will be glad to have you back on board'. Petitioner was subsequently notified by Human Resources that she was denied employment.

Petitioner with her exemplary record knew there must have been some type of mix up/mistake after receiving her 1st ineligible letter denying reinstatement/employment.

Petitioner then called Human Resources and spoke to Jason Wiley, Mr. Wiley was also under the line of supervision of Linda Bonney, the director. Wiley was very short and rude when responding to Petitioner and advised her they did not have to tell her why she wasn't hired. Petitioner, understandably distraught advised that under the right to know law she was entitled to that information.

At that time February 2005 Petitioner advised Mr. Wiley that she would file a lawsuit in order to get her job back. Petitioner immediately started calling attorneys. She then immediately responded to the Director of Human Resources, Linda Bonney with a letter that proved that the Petitioner was advised by an attorney on what Petitioner should proceed with. The attorney was courteous copied on the correspondence. Petitioner then hired a civil rights lawyer at the direction of the attorney. The Respondents knew Petitioner was filing a law suit at that time in February 2005. This is when the First Amendment Retaliation started.

Petitioner temporarily relocated to South Carolina but continued to pursue employment with the (PSP). At the advice of another attorney in South Carolina, Petitioner hired a private investigator and a professional reference company. Petitioner hired Allison and Taylor professional reference company. Allison and Taylor conduct reference checks for employment for all professionals. This was done "after" the Respondents knew Petitioner intended on filing a law suit as the name of the attorney was listed on the correspondence that was emailed and

overnighted US mail to Human Resource Director, Linda Bonney. These documents were all provided during discovery.

It proves that once they learned of a "law suit" the retaliation started. It has now been a continued course of conduct from the Respondents as it has continued.

Petitioner had been applying for positions that she was more than qualified for and was not getting any calls for said positions. While in South Carolina Petitioner applied for numerous jobs while also working part-time with her companion helping him with his small vendor business. Petitioner also reached to other potential employers. Petitioner only had a handful of responses as others obviously did not want involved in any type of lawsuit. The reference company has documented reports on what Respondents told them about Petitioner after they knew of the lawsuit. Others provided letters as to what they were advised when checking Petitioners references. The private investigator DePietro also called and documented what they had been told.

This proved to be correct as Respondent applied at the Air Force Base at the Base Exchange. The manager there researched when Petitioner had applied. The manager then emailed Petitioner advising Petitioner of the date she had applied. Then opposing counsel sent out the Subpoenas that were in violation of Federal Rule as they contained Petitioners date of birth and social security number. After the base received their subpoena they advised it was not the Petitioner. Petitioner asks "how many Kelly Conard's were applying at that time"? Petitioner was helping her companion with his small vendor business at the base at that time and other individuals that

worked at the Base Exchange knew she applied. Sadly, this shows they didn't want to be involved for fear of being entangled in some way with the lawsuit.

Respondents gave false misleading information on Petitioners work ethics. The Respondents mentioned the "law suit" along with other derogatory comments unsubstantiated by any information or employment records contained in Petitioner's official personnel file to potential employers. Respondent Tripp stated to the background investigator "this is round two" while waving the lawsuit in his hands up in the air and making the comment to the investigator "did you ever meet her"? The investigator called the potential employers as they were in South Carolina and documented the comments that were made about Petitioner.

Respondent Tripp volunteered his information freely about the lawsuits.

Many others in our small city also knew of the law suit and that the Respondents "slammed" Kelly. It was common knowledge at PSP Montoursville and this too was confirmed by a retiree that is friends and worked with Petitioner. Carol Beck knew before Petitioner had and opportunity to speak to her directly. Petitioner is now humiliated, embarrassed, stressed and experiencing labile blood pressure as a result. Her exemplary reputation has been destroyed by Respondents and Respondent Tripp is the ring leader. The Respondents tried to lead the court into believing that petitioner and Beck hated each other and didn't get along. This is proven not true. Beck and Petitioner speak to each other and email all the time. People that don't get along or hate each other certainly don't communicate with them. Again, these accusations of the Respondents who reported this to their counsel gave false information.

Petitioner had filed with the EEOC in the early case in 2006. Respondent's names Tripp and Hile were in the report. Respondents Comments were the same comments made to potential employers and the Human Resource division. Anyone can plainly see Respondents employed a strategy of spreading false information to harm Petitioner. Again, this was after they knew a lawsuit was being prepared and forth coming. Sadly, Hile one of the Respondents will not be held liable for his actions as he had retired. Respondents Tripp and Hile were the ring leaders. Namely, Respondent Tripp. This fact was proven and recognized by the seasoned Magistrate Judge after Petitioner's appellate attorney, Eric Hamilton of Williams and Connolly Law Firm , rightly argued in Petitioner's appeal. Attorney Eric Hamilton presented the case law at the oral argument in the United States Court of Appeals for the Third Circuit. All three Judges agreed to remand the case back to the Middle District Court. The Respondents continue to retaliate against Petitioner for exercising her free speech.

Furthermore, Petitioner reached out previously years ago to a United States Senator and her local Representative. Senator Arlen Specter and Representative Stephen Cappelli both wrote on behalf of Petitioner to the PSP after reviewing her records. They specifically commented on the conflicts between the Respondents oral statements and their written documentation. How what they were saying contrary to what they actually put in writing at the time it occurred and signed.

The PSP has what is called "The Communicator". It is a small paperback booklet and each active and retired gets a copy every month. After Petitioner filed the law suit the PSP never sent her anymore.

This has been a continued course of conduct for years to present. If the court doesn't intervene and allow a trial, Petitioner will no longer be able to work in the capacity as she once did and they will continue to do this to others.

This continued course of conduct is also outlined by retired Commander, Janet McNeal as she too was a victim. It started when she was a Corporal. Her Sergeant, Sergeant Seidel berated her telling her not to give discrepancies to certain troopers if their reports were wrong. This was her job. The Sergeant advised her to "just send them through, he's a good guy" and he would take care of it. McNeal advises that she took an oath when joining the PSP and it was her job to make sure all rules were followed. McNeal's Sergeant Seidel thought otherwise and advised her that "you must be fucking stupid; females should not be on the job, you better lose your fucking morals or you won't last long on this job". McNeal went to the EEO several times at the PSP and they advised her not file a complaint as "they would pick on her more".

McNeal then had an offer to transfer out of PSP Montoursville. She took her commute from 53 miles (one way) to 86 miles (one way) to escape the sexual harassment, hostile work environment and gender based discrimination inflicted on her. She advised that PSP Montoursville didn't have a female locker room when she arrived for duty there. On back to back shifts she was made to sleep in the generator room which was proven to have deteriorated asbestos pipe coverings and housed an internal combustion generator that had a dangerous, faulty, leaking exhaust system. She advised that she woke up with white dust all over her which she later learned was asbestos; she has pictures to prove this. McNeal can testify to the blatant

favoritism regarding following the rules and regulations of the PSP, the gender-based discrimination, and the hostile work environment she encountered at PSP Montoursville.

McNeal advises that after leaving PSP Montoursville she had a very rewarding career. She rose through the ranks and retired as a Captain, Commander Janet McNeal. She worked directly under the Commissioner of the PSP. She was in charge of Megan's Law. She was tasked for the entire PSP Commonwealth in the writing of several training scripts with regards to sexual harassment, gender based discrimination and hostile work environment. She explains today this task was easy as she had experienced it firsthand.

If the Respondents at PSP Montoursville can do this to a female corporal and get away with it this demonstrates the serious breakdown and violation of fair labor practices and the rules and regulations within command staff at PSP Montoursville. You have the group of "good ole boys" club that need to face the court.

During the investigator John DePietro's investigation Petitioner had been trying to reach him and was unsuccessful. When she finally caught up with him she commented on how long she had been trying to reach him. The investigator DePietro advised Petitioner that he needed to hire an administrative person. Petitioner asked to fill said position. DePietro knew the qualifications of a 17 year employee of the PSP. DePietro advised that after he himself witnessed the hostility shown toward Petitioner from Respondent Tripp and in referencing both lawsuits that he would not hire Petitioner. Respondent Tripp ask the investigator "did you ever meet her"? DePietro advised Petitioner that no one is going to hire her with those type comments.

Comments still floating around today continue and have ruined any chances for Petitioner getting employment in the capacity she once had.

The Court must intervene and put a stop to these lawless actors.

The private investigator DePietro is from Kennerdell, PA area and retired from PSP after 25 years of service. He worked all positions within the PSP before retiring. He did not know and had never worked with Petitioner as she was stationed at PSP Montoursville. They have never met face to face. He denied her employment based on the comments that were freely given by Respondent Tripp and in referencing both lawsuits. This shows that Respondent Tripp felt he maybe could persuade the investigator into joining his good ole boys club by making the comment "did you ever meet her"?

The court advised that the investigation conducted by the private investigator DePietro was "hearsay". In all the years in law enforcement I have not heard one Judge advise that a statement made directly to a private investigator based on their personal, direct interaction and observation with that person is hearsay. Since a seasoned Attorney in South Carolina advised Petitioner to hire a private investigator and professional reference company to protect her in case a witness could not be located as these types of cases take a long time; the investigator in Pennsylvania can testify to his reports and investigations since he spoke directly to them.

The Magistrate Judge also explains this in his recommendation and report that during trial and absent a witness the Petitioner could possibly lose but summary Judgement for Respondent Tripp should be denied.

During discovery Petitioner went to her local Representatives office and asks them if they could aid her in getting her job back at PSP. Petitioner thought if she could just speak to the Commissioner directly showing her evidence that the Respondents have lied; perhaps she could have ended the suit and went back to work.

Also during discovery the representative's office called the PSP and the PSP advised that if Petitioner had "any active cases" against them she could apply but would "not get an interview". This is in an email from the Representatives office. Petitioner has known many from the PSP that has filed suits against the PSP while they were working.

This also proves the First Amendment Retaliation claim.

The investigator DePietro mailed a statement made by Ms. O'Connor. Ms. O'Connor owned her own retail/vendor business. Petitioner applied to her business. O'Connor contacted the references on the application. At the time Petitioner retired Respondent Tripp and Hile were in her direct chain of command as entry level supervisors. Petitioner had listed their names on her applications. O'Connor spoke directly to Respondent Tripp. Tripp as always gave negative references to O'Connor about Petitioner. Respondent Tripp also mentioned the law suit to her. She too was concerned about the law suit just as others were. O'Connor's statement was documented by the private investigator DePietro. DePietro had sent her his notes and had her notarize it. She then mailed it back to DePietro. DePietro then mailed it to Petitioner in South Carolina. That notarized document was lost in transition from South Carolina to Pennsylvania when Petitioner was taking care and moving her Mother that had Alzheimer's. The statements

were documented and notarized and can certainly be notarized again. Furthermore, the witness herself can provide her own testimony.

DePietro spoke directly to the Attorney General Ms. Deibert a couple of times, went over his investigation providing his findings. He provided her with all his information. He too received one of the Subpoenas that were in violation. Being familiar with subpoenas he too noted it and advised Petitioner. O'Connor has been referred to by the court as possibly being fictitious. The investigator did a sworn affidavit and presented it to the court to confirm the validity.

At one point when the professional reference company called Human Resources they advised the reference company that Ms. Conard never worked for PSP. That was a blatant lie. If they did not know her personally, they could have confirmed it as they still had access to her official personnel files. Petitioner Kelly Conard had been in the lime light with PSP since the first case in 2006. They all knew who she was and that she had worked for the PSP for years period.

The Respondents even went to the extreme measures of fabricating falsified documents to support their case. They made up notes dated back to 1998/1999 that were not in petitioners file in 1998/1999 and not in the Petitioner's file at the date of her retirement. The falsified documents even listed dates of actions and conversations with Petitioner that were alleged to transpire on dates Petitioner was not even working. It is shocking that a background report from 2005 that is required to be retained was missing. Even if there were any type of informal notes it is required to be purged within one year. One can only speculate why and when those fabricated falsified notes were actually done. If they didn't have the background report from 2005 then

where did these notes come from? Petitioner explains this in detail in her brief and reply brief. Falsifying documents for official functions is a very serious offense for law enforcement.

Petitioner knowing and working for PSP can certainly testify to the sexual harassment, gender based discrimination and hostile work environment brought on by some of its members. The few bad apples are making the whole department look bad. If the Command staff would give the opportunity to hear the "little guys" the department would be much cleaner without incident. The court must intervene.

The Respondents namely Tripp advised the individual's conducting the professional reference check for a Government position advised them that he wouldn't hire Petitioner. He claimed she didn't get along with her coworkers, only worked the midnight shift so she didn't have to deal with anyone, wasn't dependable and would avoid her supervisors. This too was not documented or reflected in her official personnel file and written performance evaluations at the time and only materialized after the Respondents were aware of the forth coming lawsuit as they had been advised by Petitioner.

Petitioner worked directly with her permanent midnight shift supervisor Corporal R. Scott Hunter for many years. Corporal Hunter retired as a Commander he too provided an affidavit for Petitioner and is willing to testify on her behalf and describing her as one of the best communications officer's PSP Montoursville ever had.

Sergeant Alexander Roy supervisor over both Petitioner and Respondents also wrote on behalf of Petitioner advising that the comments being made by Respondent(s) Tripp in all his accusations were false, misleading and defamatory. All of this evidence was submitted during

discovery and is spelled out in the brief and reply brief of Petitioner.

Respondent Tripp was just an entry level Corporal at the time and he broke the chain of command and abused his position and authority.

Keeping in mind that Respondent Tripp only saw Petitioner in passing at shift change maybe 6-8 days a month. Respondent worked days and Petitioner worked nights.

Respondent hadn't known Petitioner her whole career only the last 3 years and even then only saw her maybe 6-8 a month in passing as they worked opposite shifts. There was absolutely no reason for Respondent to make such accusations about Petitioner.

Respondent Tripp took care of the evidence room and patrol cars. Respondent Tripp was always seen walking around in coveralls with wads of chewing tobacco in his mouth and a spit cup in hand, in direct violation of PSP rules and regulations about chewing tobacco and in uniform attire. In fact, he was in the public's eye in this manner too when going and picking cars up from the garage and stopping in the communications room for paper work which is in the direct view of anyone that walked into the PSP. These are yet another example of Respondent's total disregard for obedience to the rules, regulations and protocols of the PSP. Respondent Tripp felt he was exempt from those rules.

Another serious incident and investigation that had been done inside the PSP and that was never provided to Petitioner's counsel when asked for all of the Respondents files pertaining to the unlawful purchase of a firearm by Respondent Tripp that was held in evidence. Respondent Tripp while holding the position of evidence custodial officer wanted to purchase a

gun that was being held in evidence. PSP regulations specifically prohibit PSP evidence custodial officers from purchasing guns held in evidence and in violation of rules pertaining to disposition of firearms.

When the rightful owner declined to claim the gun, per PSP regulation, the gun became unclaimed property. By regulation it was to be escheated and destroyed. The PSP is not in the business of buying and selling firearms to civilians. Clearly the son involved in this incident was not aware of PSP regulations and relied on the direction of the PSP official, the Respondent Tripp. However, the Respondent was completely aware and deceived the person into committing a serious violation of the law. The full description of the incident and relevant criminal and PSP regulations are explained in full in Petitioner's brief and reply brief. A brief synopsis of the incident is as follows:

The owner of the gun did not want it. Respondent knew the son of the owner of the gun, a retired PSP civilian, so Respondent Tripp called him and had him meet at the gun shop. Tripp criminally solicited the son to sign off his father's gun and Tripp paid for the gun while in uniform. The son was not the legal owner and had no authority to sell the gun and Respondent was prohibited from purchasing it. The Respondent was well aware of that fact. It is illegal in the state of Pennsylvania to transfer a gun without the owner there to sign.

Obviously the son did not want the gun either and did not know that Respondent Tripp had no authority to transfer or purchase the gun in this manner. When the father, the true gun owner, found out he was devastated. He advised his son "you can't do that". The father a retired civilian employee of the PSP called in a complaint to the PSP and an investigation was done

internally at that troop. The father wanted the respondent disciplined for the conduct. However, when advised he would have to have his own son arrested for fraud before they could do anything to help him he, the gun owner declined with prosecuting his own son for something that was not his sons fault. The incident was concluded without the Respondent being held accountable. This was handled within Troop F Montoursville. Respondent Tripp has put individual's in horrific positions for his own personal gain/benefit using and abusing his position as a Pennsylvania State Trooper.

Incidentally, the gun shop that Respondent Tripp used was known to conduct questionable gun deals. In an article it was reported that this gun shop had apparently sold many guns to an individual who would then sell the guns illegally on the street. One of those guns was found by a child under a parked car and that child proceeded to shoot and kill a 7 year old. The gun dealer/shop paid \$850,000.00 to settle. This is the gun shop Respondent Tripp had the son come to and do the transaction that was not legal and Respondent Tripp knew it was not legal.

This incident involving Respondent Tripp with criminally soliciting the son would constitute an illegal straw purchase, violating both the PSP regulations and Chapter 61 of the Pennsylvania Crimes Code regarding firearms. The assertion by the District Judge that the Respondent "then followed protocol" is blatantly incorrect and clearly demonstrates the Respondents total disregard for legal, moral and ethical practices by a law enforcement officer.

There is no doubt whatsoever that a PSP Corporal who is willing to engage in criminal conduct regarding the straw purchase of a firearm, while in uniform, on duty and knowing the violation to be both criminal and against the rules and regulations of the State Police would also

engage in other falsifications, including making false oral statements, forging false documents to support his lies, and creating a hostile work environment, abusing his rank over a subordinate with malicious statements and acts, and by engaging in gender based discrimination against a subordinate who he merely dislikes. All of which has caused the Petitioner to suffer great personal loss of her reputation and pecuniary loss as Petitioner has been denied employment with the Commonwealth and other employers in a position she possesses the skills, knowledge and ability to perform in an outstanding and commendable manner. That denial of employment is solely based on the false negative and inflammatory statements of the Respondents.

Supporting documents citing violations of the Crimes Code and PSP rules and regulations were printed and submitted during discovery. Petitioner was assisted in this by a retired PSP Captain who is particularly knowledgeable in the PSP rules and regulations having served as a compliance auditor within the PSP Bureau of Professional Responsibility, Staff Inspection Division.

Petitioner as a Pro Se litigant provided the Appellate Court with all documents along with the evidence that Petitioner and her counsel(s) provided during discovery. The brief and evidence on second appeal contained the following: brief (82 pages), reply brief (38 pages), appendix I (81 pages) appendix II (151 pages) and appendix III (298 pages). In this evidence it included the subpoenas that were sent out by the opposing counsel /Attorney General's Office in violation of Federal Civil Rule as they contained the Petitioners date of birth and social security number. Before remand, Attorney Hamilton submitted a 68 page brief proving case law and a reply brief of 28 pages that were submitted. All other evidence was outlined.

Moving forward, the brief and reply brief outline in dated order showing when the retaliation started. It was after Petitioner spoke to Mr. Wiley at Human Resources and sent and emailed Linda Bonney a letter that contained the courteous copy to the attorney. This conduct has continued thus the reason for filing a 2nd lawsuit. This proves the first amendment retaliation as it started as soon as they were aware of lawsuit. The Respondents then lied to the EEOC after learning of the lawsuit. Respondents gave false misleading information the same as they have given others.

Petitioner has copies of all her motions and requests and the appellate court has stated this incorrectly in their opinion/judgement. Petitioner's motion(s) that were sent to a merits panel were never responded to Petitioner in a timely manner, therefore Petitioner was not afforded time to make any necessary changes in trying to compress her writings (**APP 14**). The writings were necessary to bring a clear understanding to the court for their review. Petitioner filed her case prior to receiving the response from the merits panel. Petitioner submitted everything by US mail. The US mail does not guarantee a delivery date. Petitioner had called and the court clerk allowed an emergency motion to be emailed as it was an emergency motion. Petitioner's case was submitted before getting a response. Petitioner had even called the briefing team and was advised not to worry about it as Petitioner had already sent her documents/case in. They knew Petitioner was a Pro se litigant and was submitting everything by mail.

After Petitioner reviewed the opinion from the appellate court there are several statements stated incorrectly. Petitioner can provide the evidence to The United States Supreme Court so they have a clear understanding.

It appears that the evidence supplied to the district court and appellate was not reviewed in its entirety.

The Petitioner counsel in the District Court, Attorney James Best , also filed with the EEOC and the EEOC 's investigation has ruled and determined illegal discrimination existed based on retaliation. The EEOC turned the case over to the Department of Justice for legal action. **The Department of Justice has now issued Petitioner's counsel a letter for the "right to sue".**

REASONS WHY THE WRITE SHOULD BE GRANTED

With the hours of research that went into the extensive case law provided by Pro bono counsel Eric Hamilton of Williams and Connolly Law Firm that proved why the case should be remanded. The questions presented were ask by the court. All three Judges at the Appellate court regarding the questions agreed to remand said case.

A seasoned Judge who had initially ruled against Petitioner after hearing from counsel and only viewing a handful of evidence reversed his opinion ruling in Petitioner's favor and presenting case law to uphold his findings. He states that summary judgement should be denied as to Respondent Tripp.

Furthermore, after remanding Attorney James L. Best proceeded with discovery on a contingency basis after reviewing said case. Hundreds of pages of evidence proving the time line showing the 1st Amendment retaliation. Allison and Taylor Professional Reference company, the private investigator DePietro and the email to the Representatives office that came directly from the Pennsylvania State Police stated (PSP) "she (Petitioner) could reapply but

would not get an interview if there were any “active cases”. Just this one piece proves the 1st Amendment Retaliation claim.

Petitioner notes that many PSP employees file suits against the PSP while they are employed by PSP. There are also employees that are disciplined for wrong doing while employed and given days off. The PSP didn't discriminate against any of them and they remained on the job until their retirement. Petitioner never having been disciplined who was assigned the permanent midnight shift “alone at her post” proves that she was trusted in her position and was well regarded for by her Commanders and supervisors that worked directly with her nearly her whole career.

Respondent Tripp was a “newly promoted entry level Corporal whose main assignment was taking care of evidence and patrol vehicles. Again, noting that after the completion of discovery a seasoned Judge reversed his opinion and ruled in favor of Petitioner in denying summary judgement for Respondent Tripp.

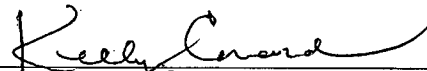
CONCLUSION

This case is extremely important to Petitioner as Petitioner seeks justice for the wrongs and ongoing harm to her perpetrated by unethical PSP personnel who abused their positions of authority by making false statements and fabricated documents to support their lies. It will determine her future in obtaining employment in a professional capacity commensurate with her skills, abilities, and pay scale. It is also necessary for restoring her previous good reputation of being an outstanding and commendable employee and a recipient of a meritorious service award.

Finally, it will allow her to be considered and hired for positions within the Commonwealth of Pennsylvania as Petitioner is currently being prohibited from consideration for interview or hiring due to the ongoing discrimination resulting from false and malicious allegations arising from the misconduct of the Respondent(s).

Furthermore, it may act as a deterrent to those actors who act so lawlessly and are swerving from the path of duty and the oath they take. The Petitioner is respectfully asking The Supreme Court of the United States to intervene and allow a trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kelly Conard", written over a horizontal line.

Kelly Conard
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(843) 471-7968
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Dated: June 3rd, 2022

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3644

KELLY CONARD,
Appellant

v.

PENNSYLVANIA STATE POLICE; PSP HUMAN RESOURCES;
SGT. JOSEPH TRIPP; DENNIS HILE

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 1-15-cv-00351)
District Judge: Honorable Sylvia H. Rambo

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on October 4, 2021

Before: GREENAWAY, JR., KRAUSE, and BIBAS, Circuit Judges

(Opinion file: January 6, 2022)

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OPINION*

PER CURIAM

Pro se appellant Kelly Conard appeals from the District Court's order granting the defendant's motion for summary judgment. For the following reasons, we will affirm the District Court's judgment.

I.

As we write primarily for the parties, who are familiar with the facts, we will discuss the details only as they are relevant to our analysis. Conard worked for the Pennsylvania State Police from 1985 until 2002, when she retired to join her then-husband who was assigned military service in Texas. In 2004, she applied to rejoin the State Police, but was not hired in part because her former supervisors Dennis Hile and Joseph Tripp provided negative feedback regarding Conard's dependability and previous use of sick leave. In November 2005 Conard filed a charge of gender discrimination with the EEOC and the Pennsylvania Human Relations Commission. In July 2006, she filed a federal lawsuit against Hile, Tripp, and the State Police. The District Court ultimately granted the defendants' motion for summary judgment in that suit, and we affirmed in an unpublished opinion. Conard v. Pa. State Police, 360 Fed. Appx. 337, 338 (3d Cir. 2010) (per curiam).

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

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In 2015, Conard filed this second action, alleging in part that the same defendants retaliated against her in violation of her First Amendment rights for having brought the first suit. The District Court granted the defendants' motion to dismiss for failure to state a claim on which relief could be granted. On appeal, we clarified the applicable First Amendment legal standard and reversed as to Conard's First Amendment retaliation claim. Conard v. Pa. State Police, 902 F.3d 178, 182-85 (3d Cir. 2018). After discovery, the defendants moved for summary judgment. Conard conceded summary judgment as to Hile and the State Police but argued that the summary judgment record supported a claim that Tripp retaliated against Conard by providing negative employment references.¹

A Magistrate Judge recommended that the defendants' motion for summary judgment be denied as to Tripp. But the District Court disagreed and granted the defendants' motion in its entirety. Conard appeals.

II.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over a grant of summary judgment, applying the same standard that the District Court applies. Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 141 (3d Cir. 2017). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A factual dispute is 'genuine' if the 'evidence is such that a reasonable jury

¹ While Conard is proceeding pro se on appeal, she was represented by one attorney for the beginning of the discovery process and, after she asked the first attorney to withdraw, a second attorney for the conclusion of discovery and summary judgment briefing.

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could return a verdict for the nonmoving party.’” Razak v. Uber Techs., Inc., 951 F.3d 137, 144 (3d Cir. 2020) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). A factual dispute is “material” if it “might affect the outcome of the suit under the governing law.” Id. (internal quotation marks omitted). We “must view the facts and evidence presented ... in the light most favorable to the nonmoving party.” Id.

III.

First, we briefly address the scope of the evidentiary record. The defendants accompanied their motion for summary judgment and supporting brief with a statement of undisputed material facts citing deposition testimony and declarations. Conard, through her then-counsel, responded in a brief citing several attached exhibits.² On appeal, Conard, now proceeding pro se, submitted more than 200 pages of additional exhibits not cited by either party in the summary judgment briefing before the District Court. While Conard submitted some of these exhibits to the District Court in 2015 when responding to the defendants’ motion to dismiss, many others were never submitted to the District Court and some even post-date the District Court’s judgment. We cannot consider documents that were not part of the record before the District Court. See In re Capital Cities/ABC, Inc.’s Application for Access to Sealed Transcripts, 913 F.2d 89, 96 (3d Cir. 1990) (“This Court

² The District Court noted that Conard’s submission failed to comply with Middle District of Pennsylvania Local Rule 56.1 by failing to provide a separate counter-statement of material facts. The District Court still conducted a full analysis to determine whether granting summary judgment was appropriate. See Weitzner v. Sanofi Pasteur Inc., 909 F.3d 604, 613 (3d Cir. 2018).

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has said on numerous occasions that it cannot consider material on appeal that is outside of the district court record.”).

To prevail on her First Amendment retaliation claim, Conard had to show that: “(1) she engaged in constitutionally protected conduct, (2) there was retaliatory action sufficient to deter a person of ordinary firmness from exercising her constitutional rights, and (3) there was a causal link between the constitutionally protected conduct and the retaliatory action.” Conard, 902 F.3d at 183 (alterations omitted) (quoting Mirabella v. Villard, 853 F.3d 641, 649 (3d Cir. 2017)). There is no dispute that Conard’s initiation of the first lawsuit was constitutionally protected conduct. Tripp argues that no genuine dispute as to material facts exists concerning the latter two elements, and that he is entitled to judgment as a matter of law on both points. We focus on the third element, causation.

To establish causation, Conard needed to show that her “‘constitutionally protected conduct was a substantial or motivating factor’ for the retaliatory conduct.” Conard, 902 F.3d at 184 (quoting Watson v. Rozum, 834 F.3d 417, 422 (3d Cir. 2016)). This can be done through “evidence of: (1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of antagonism coupled with timing to establish a causal link.” Watson, 834 F.3d at 424. If Conard succeeded, Tripp would then have the opportunity to respond by showing that the allegedly retaliatory action would have been taken anyway, independently of any retaliatory animus. Mirabella, 853 F.3d at 651-52; see Hartman v. Moore, 547 U.S. 250, 260 (2006) (“[A]ction colored by some degree of bad motive does not amount to a constitutional tort if that action would have been taken anyway.”).

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Conard alleged that Tripp provided negative references to prospective employers as a result of her first lawsuit. She emphasized the alleged contrast between the generally positive performance reviews prepared by Tripp and Hile during her final years with the State Police and Tripp's later criticisms. But Tripp does not contend, and the record does not support, that this contrast emerged only as retaliation for Conard's first lawsuit. Indeed, Conard's first lawsuit was based in part on this same alleged contrast. She alleged that Tripp helped block her rehiring by inaccurately and unfairly criticizing her prior service. To show retaliation, Conard thus must show that her constitutionally protected activity motivated some escalation in Tripp's conduct beyond this preexisting animosity. See Feldman v. L. Enft Assocs. Corp., 752 F.3d 339, 349 (4th Cir. 2014) (affirming order granting summary judgment where plaintiff "offered no evidence that his [protected] conduct changed the bitter status quo in any way").

Conard identifies this escalation as Tripp's provision of negative employment references. Under State Police policy, any reference requests were supposed to be processed through an automated verification system, not answered by former supervisors like Tripp. Importantly, Conard's theory of causation requires that Tripp provided negative feedback for references purposes after her protected conduct. If a prospective employer received negative feedback from the State Police Human Resources Department based on Tripp's previous comments during the review of her 2004 application, that would not be evidence of retaliation by Tripp.³

³ Newly solicited feedback from Tripp could constitute retaliation, even if relayed to a potential employer indirectly. But the record contains no evidence that any reference

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In opposing summary judgment, Conard relied in part on the alleged statements by Tripp to Joseph DePietro to support her theory of causation. Pl.'s Br. in Opp'n 12, ECF No. 86. DePietro is a former Pennsylvania state trooper who now works as a private investigator. Conard hired him to serve the defendants with this lawsuit and to investigate negative references being given to potential employers. DePietro arranged to meet Tripp and Hile in the parking lot of a grocery store to serve the lawsuit. According to DePietro, Tripp was hostile, commented that "this is round two," and asked if DePietro had ever met Conard.⁴ Conard later asked DePietro to consider her for a position with his business. He declined, citing Tripp's comments. Although Tripp's comments may have affected Conard's chances of employment with DePietro, Tripp had no reason to believe that DePietro was a potential employer or that his comments to DePietro would have any effect on Conard. For these reasons, we agree with the District Court that these comments cannot be reasonably understood as a negative employment reference, or indeed any form of retaliatory action.

Conard also relied on statements that she claimed Tripp made to a Ms. O'Connor. DePietro reported that he interviewed O'Connor in late 2015. O'Connor ran a traveling

provided by the State Police Department of Human Resources involved new feedback from Tripp. Notably, Tripp's negative views might also be accessible to potential employers through the publicly available records of Conard's first lawsuit. See Pl.'s Unsworn Declaration 13, ECF No. 19 (alleging that a potential employer found one of the judicial opinions on the internet).

⁴ In a report Conard submitted to the District Court in response to the defendants' motion to dismiss, DePietro represented that he engaged in conversation with Tripp and asked him "what this was all about," leading to the cited comments. Pl.'s Ex. Part I 17, ECF No. 20.

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retail business, and Conard applied for employment. According to DePietro, O'Connor checked Conard's references and received a negative reference from Tripp. DePietro claims that he had O'Connor sign a notarized statement which he provided to Conard. But DePietro reports that Conard has since misplaced that document.⁵

We agree with the District Court that DePietro's account of O'Connor's statements is hearsay evidence that could not be considered. "The rule in this circuit is that hearsay statements can be considered on a motion for summary judgment if they are capable of being admissible at trial." Fraternal Order of Police, Lodge 1 v. City of Camden, 842 F.3d 231, 238 (3d Cir. 2016) (alterations omitted) (quoting Stelwagon Mfg. Co. v. Tarmac Roofing Sys., 63 F.3d 1267, 1275 n.17 (3d Cir. 1995)). The proponent of such evidence must explain the admissible form that is anticipated. Id. Conard has provided no evidence that O'Connor would not be available for trial and has identified no hearsay exception that would permit DePietro to testify as to O'Connor's alleged statement.

Absent the statements to DePietro and O'Connor, the record contains no evidence of direct statements specifically by Tripp to potential employers after the first lawsuit. Conard's contention that Tripp provided negative references in that time period is thus circumstantial and relies on speculative inferences from evidence referring generally to negative references or references provided by the State Police. Even assuming that a jury could reasonably find that Tripp did in fact provide such references, other evidence,

⁵ Neither Conard nor DePietro have explained why they have not attempted to replace the lost statement or provided any further information concerning Ms. O'Connor, such as her full name, any contact information, or the name of her business.

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including reports by professional reference check company Allison & Taylor, produces a causation problem. Conard retained Allison & Taylor four times, in 2005, 2011, 2013, and 2014, to check her references with the State Police. According to the firm's reports, Tripp provided a negative reference to them regarding Conard in April 2005. In the later years, he declined to provide a reference, citing either State Police policy or his personal preference.⁶ To the extent that the negative reference predates Conard's protected activity, it fatally undermines her theory of causation. The defendants highlighted this point before the District Court. Defs.' Br. in Supp. of Summ. J. 12, ECF No. 80; Defs.' Br. in Supp. of Defs.' Partial Objs. 6, 9, ECF No. 90. Conard, through her then-counsel, did not respond to this argument, and the District Court relied on it. Mem. 12, 14-15, ECF No. 91.

On appeal, Conard argues for the first time that Tripp could have retaliated in April 2005 because he would have been aware that she threatened to file a lawsuit in her communications with the State Police.⁷ She relies on an alleged statement she made by phone to Jason Wiley with the State Police Human Resources Department and a letter she sent in February 2005 to the State Police Department of Human Resources requesting that the denial of her application be reconsidered. The letter contains an indication of a courtesy

⁶ Unbeknownst to Tripp, he was not communicating with a genuine prospective employer.

⁷ Conard has not previously identified any threat to file a lawsuit as protected conduct, but that position is at minimum reasonable. See Anderson v. Davila, 125 F.3d 148, 162-63 (3d Cir. 1997) (explaining that allowing harassment of one who announced an intention to file a lawsuit would render the right to petition useless); Watson, 834 F.3d at 422-23 (declining to draw any distinction for retaliation purposes between declaring an intent to file a grievance and actually filing).

A-10

copy to an attorney. See App. III 69, 3d Cir. ECF No. 13. But the letter was not submitted to the District Court at any stage of this litigation, and we cannot consider it.⁸ See In re Capital Cities, 913 F.2d at 96. Conard's alleged statement to Wiley is reflected in her deposition testimony, which the defendants submitted with their statement of undisputed material facts. See ECF No. 81-1 at 36-37, 51-52. Conard did not cite this testimony or any portion of her deposition testimony in her opposition to the defendants' motion for summary judgment. See Fed. R. Civ. P. 56(c)(1)(A).

"It is well-established that arguments raised for the first time on appeal are not properly preserved for appellate review." Simko v. U.S. Steel Corp., 992 F.3d 198, 205 (3d Cir. 2021). Conard did not argue to the District Court that Tripp was aware of any protected conduct in April 2005, so she has forfeited that argument. See id. We may consider forfeited arguments only under truly exceptional circumstances, and Conard has not identified such circumstances here.⁹ Id. at 205-06. On the record and arguments before the District Court, a jury could not reasonably rule for Conard on causation.¹⁰

⁸ Conard mentioned the letter in her deposition testimony but did not mention copying an attorney. See ECF No. 81-1 at 36-37.

⁹ This is especially true given her failure to comply with Local Rule 56.1 before the District Court.

¹⁰ Even if we considered Conard's new argument, her theory of causation would require a jury to determine that Tripp actually became aware of the threatened lawsuit, would not have responded to Allison & Taylor in 2005 absent that threat, and continued to provide negative references to prospective employers years later, notwithstanding the contrary evidence of the later Allison & Taylor reports. But we need not decide whether a jury could reasonably reach those conclusions from the summary judgment record.

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IV.

Accordingly, we will affirm the judgment of the District Court.¹¹

¹¹ Conard filed a perfunctory motion to, inter alia, file an overlength brief without limitation. On February 26, 2021, The Clerk denied the motion as presented, but granted Conard permission to file a brief not exceeding 15,600 words. She then filed another, more-developed motion, which has been referred to us, essentially seeking reconsideration of that decision because her draft had surpassed 25,000 words. She ultimately filed a brief of 17,744 words. We grant Conard's motion to reconsider the word limit imposed by the Clerk's Order of February 26, 2021, in that we accept and have considered her overlength brief as filed.

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3644

KELLY CONARD,
Appellant

v.

PENNSYLVANIA STATE POLICE; PSP HUMAN RESOURCES;
SGT. JOSEPH TRIPP; DENNIS HILE

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 1-15-cv-00351)
District Judge: Honorable Sylvia H. Rambo

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on October 4, 2021

Before: GREENAWAY, JR., KRAUSE, and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on October 4, 2021.

On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the judgment of the District Court entered November 30, 2020 be and the same hereby is **AFFIRMED**. Costs will be taxed against Appellant. All of the above in accordance with the opinion of this Court.

A-13

ATTEST:

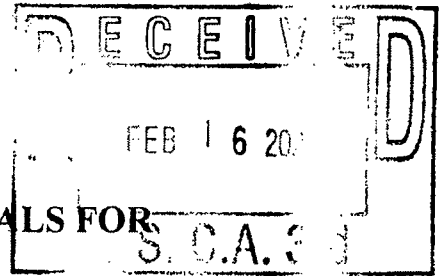
Dated: January 6, 2022

s/ Patricia S. Dodzuweit
Clerk



Teste: *Patricia S. Dodzuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

A-14



**IN THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

Kelly Conard,	:	
Appellant	:	NO. 20-3644
	:	
v.	:	
	:	
Pennsylvania State Police et al.,	:	
Appellees	:	

MOTION FOR ENLARGEMENT OF TIME

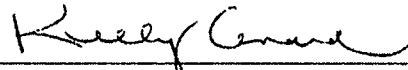
MOTION TO FILE OVER LENGTH BRIEF

AND NOW this 12th day of February 2021 comes the Appellant Kelly Conard, a Pro se litigant which is respectfully asking for a 60 day enlargement of time in order to prepare. Plaintiff is also respectfully asking for permission to file an over length brief to rebut the order from the middle district court.

A-15

WHEREFORE; Appellant Kelly Conard, Pro se litigant respectfully requests an Order granting her a 60 day Enlargement of Time and is respectfully requesting an Order granting permission to file an Over Length Brief.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kelly Conard", is written over a horizontal line.

Kelly Conard
338 Duke Street
Williamsport, PA 17701

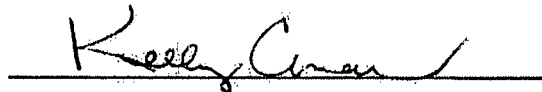
Dated: February 12, 2021

A-16

CERTIFICATE OF SERVICE

I, Kelly Conard, certify that I am serving the Defendants, through their Counsel, by first-class mail, addressed as follows:

**Office of Attorney General
Howard Hopkirk
Civil Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120**

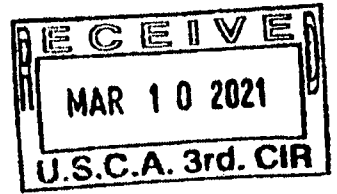
A handwritten signature of Kelly Conard in black ink, written over a horizontal line.

Kelly Conard
338 Duke Street
Williamsport, PA 17701

Dated: February 12, 2021

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IN THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT



Kelly Conard,
Appellant

NO. 20-3644

v.

Pennsylvania State Police et al.,
Appellees

MOTION TO FILE OVERLENGTH BRIEF OF AT LEAST 25,000 WORDS

or whatever is needed to be complete, clear and concise

AND NOW this 9th day of March, 2021 comes the Appellant Kelly Conard, a Pro se litigant which is respectfully asking permission from this court to allow a brief of at least 25,000 words or whatever is needed to be complete, clear and concise as possible. Appellant currently working on brief has already passed 25,000 words.

Appellant Kelly Conard needs to rebut the district court order. This is a long standing complicated complex case that was remanded by this court. District case number 1:15-CV-351. Appeal case number before remand No. 16-3346. After this court remanded this case the Magistrate Judge who previously ruled against

Appellant has now made a recommendation to rule in her favor. He has provided case law to support his report and recommendation.

Appellant had been a Pro Se litigant until this court aided in getting Pro bono help for her before the oral argument. It was absolutely necessary in order to provide case law to address questions that were presented by the court. Since having an Attorney(s) to explain and seeing evidence the Magistrate Judge has reversed his opinion.

Appellant received a copy of the order and the District Judge has granted summary judgement again in its entirety. Appellant is able to provide clarity to everything that is stated incorrectly and what is not stated in a complete manner in said order. It is imperative that Appellant is complete, clear and concise with her response so that this court will understand.

Appellant will provide all briefs and orders from previous remand and from the lower court.

Due to the complexity of this case there were briefs submitted by Attorney Eric Hamilton of Williams and Connolly Law Firm that were 68 pages and a reply brief of 28 pages that were submitted to this court and addressed at the oral argument. All three Appellant Judges after hearing and questioning Attorney Eric Hamilton at the oral argument agreed to remand. Attorney Eric Hamilton, Pro Bono counsel

provided the extensive case law was necessary to answer questions that had been presented by the court.

Appellant's recent attorney at the lower court; now on a contingency basis is James Best. He is a one man law office. He is not an Appellate specialist.

Since the District Judge's own Magistrate Judge ruled in favor, this ruling does not make sense. Appellant was advised by Attorney Best that he would re-enter his appearance if said case was remanded again.

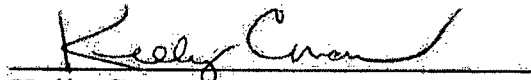
Since this case is so complicated Appellant is not going to waste the valuable time of another Pro bono counsel. She has been forever grateful for the help she received. All the case law has been done; discovery has been done with tons of evidence to support.

After Appellant reviewed the order from the district there are several issues stated incorrectly and are incomplete and Appellant can address this for the court so they have a clear understanding. This case is extremely important to Appellant as it will determine her future in obtaining employment in a professional capacity as she once had.

Appellant apologizes to this court for not doing her previous motion more thoroughly.

WHEREFORE; Appellant Kelly Conard, Pro se litigant respectfully is requesting an Order granting her permission to file a Brief of at least 25,000 words or whatever is needed in order to be complete, clear and concise as possible due to this complex complicated case and in order for this court to get a clear picture of said case.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kelly Conard", written over a horizontal line.

Kelly Conard
338 Duke Street
Williamsport, PA 17701

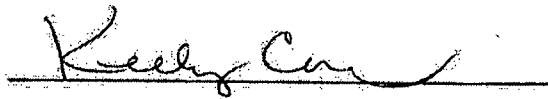
Dated: March 9, 2021

A-21

CERTIFICATE OF SERVICE

I, Kelly Conard, certify that I am serving the Defendants, through their Counsel, by first-class mail, addressed as follows:

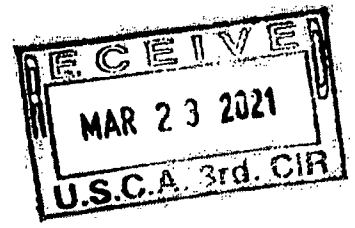
**Office of Attorney General
Howard Hopkirk
Civil Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120**

A handwritten signature in cursive script, reading "Kelly Conard", is written over a horizontal line.

Kelly Conard
338 Duke Street
Williamsport, PA 17701

Dated: March 9, 2021

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**IN THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

Kelly Conard,
Appellant

NO. 20-3644

v.

Pennsylvania State Police et al.,
Appellees


MOTION TO EXTEND DEAD LINE

AND NOW this 19th day of March, 2021 comes the Appellant Kelly Conard, a Pro se litigant which is respectfully asking for a 45 day Extension of time in order to prepare. This is due to the short period of time and not knowing if my request to increase size of my brief to 25,000 words or whatever is needed in order to be complete, clear and concise is granted. This would cause a hardship in not having enough time to make necessary edits to prepare properly as said brief is due on April 7, 2021.

1A-23

WHEREFORE; Appellant Kelly Conard, Pro se litigant respectfully requests an Order granting her a 45 day Extension of Time due to the short period of time and not knowing if my request to increase size of my brief to 25,000 words or whatever is needed in order to be complete, clear and concise is granted. This would cause a hardship in not having enough time to make necessary edits to prepare properly as said brief is due on April 7, 2021

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kelly Conard", written over a horizontal line.

Kelly Conard
338 Duke Street
Williamsport, PA 17701

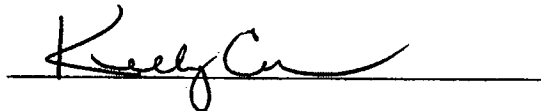
Dated: March 19, 2021

A-24

CERTIFICATE OF SERVICE

I, Kelly Conard, certify that I am serving the Defendants, through their Counsel, by first-class mail, addressed as follows:

**Office of Attorney General
Howard Hopkirk
Civil Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120**



Kelly Conard
338 Duke Street
Williamsport, PA 17701

Dated: March 19, 2021

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 20-3644

Conard v. Pennsylvania State Police

To: Clerk

- 1) Motion by Appellant for Leave to File Overlength Pro Se Brief Containing \$25,000 Words

The foregoing motion is referred to a motions panel. The briefing schedule is hereby stayed pending disposition on the motion for leave to file an overlength pro se brief. Appellant's brief and appendix must be filed and served within thirty (30) days of disposition on the motion.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: March 23, 2021
SLC/cc: Kelly Conrad
Howard G. Hopkirk, Esq.

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 20-3644

Conard v. Pennsylvania State Police
(M.D. Pa. No. 1-15-cv-00351)

ORDER

Upon further review, the Clerk's order dated March 23, 2021, is hereby VACATED. Appellant's second motion for leave to file an overlength brief of at least 25,000 words is construed as a motion to review the Clerk's order dated February 26, 2021. So construed, the motion is referred to the merits panel. The briefing schedule will not be stayed. Appellant's brief and appendix must be filed and served within thirty (30) days of the date of this order. Appellees' brief must be filed and served within thirty (30) days of the date of service of Appellant's brief. Appellant's reply brief must be filed and served within twenty-one (21) days of the date of service of Appellees' brief.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: March 24, 2021
SLC/cc: Kelly Conrad
Howard G. Hopkirk, Esq.

**IN THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

Kelly Conard,	:	
Appellant	:	NO. 20-3644
	:	
v.	:	
	:	
Pennsylvania State Police et al.,	:	
Appellees	:	

**EMERGENCY MOTION TO EXPEDITE CONSIDERATION OF LAST
MOTION FILED ON MARCH 16TH, 2021**

**(TO FILE AN OVERLENGTH BRIEF OF AT LEAST 25,000 WORDS IN
ORDER TO BE CLEAR, CONCISE AND COMPLETE)**

EMERGENCY MOTION TO EXTEND DEAD LINE OF BRIEF

AND NOW this 14th day of April 2021 comes the Appellant Kelly Conard, a Pro se litigant which is respectfully asking this court for an Emergency Motion to expedite consideration of last motion filed on March 16, 2021. Motion was to file an over length brief of at least 25,000 words or whatever is needed in order to be clear, concise and complete. Appellant is respectfully asking the court to extend dead line of brief as a result for 30 days.

WHEREFORE; Appellant Kelly Conard, Pro se litigant respectfully requests an Emergency Order to expedite consideration of last motion filed on March 16, 2021. Motion was to be able to file an over length brief of at least 25,000 words or whatever is need in order to be clear, concise and complete.

Appellant is respectfully asking for an Order to extend the dead line of brief for 30 days.

Respectfully submitted,

Kelly Conard /S

Kelly Conard
338 Duke Street
Williamsport, PA 17701

Dated: April 14, 2021

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CERTIFICATE OF SERVICE

I, Kelly Conard, certify that I am serving the Defendants, through their Counsel, by first-class mail, addressed as follows:

**Office of Attorney General
Howard Hopkirk
Civil Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120**

Kelly Conard/S

Kelly Conard
338 Duke Street
Williamsport, PA 17701

Dated: April 14, 2021

A-30

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KELLY CONARD,**Plaintiff,****v.****PENNSYLVANIA STATE
POLICE, et al.,****Defendants.**

Civil No. 1:15-CV-351
:
:
(Judge Rambo)
:
:
(Magistrate Judge Carlson)
:
:
:
:

REPORT AND RECOMMENDATION

I. INTRODUCTION

In this case we most assuredly do not write upon a blank slate. This longstanding civil rights lawsuit involves First Amendment retaliation claims brought by Kelly Conard, a former state police employee, against various state police officials. Conard alleges that these officials retaliated against her for filing a lawsuit in 2006 by later providing adverse personnel references when she sought other employment.

Relying upon then-existing circuit case law, which suggested that a First Amendment retaliation claim typically required some close temporal proximity between the plaintiff's protected activity and the allegedly retaliatory actions of the defendants, in June of 2016 this court found that Conard had not sufficiently alleged

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facts giving rise to a causal inference since as much as four years separated Conard's lawsuit from the allegedly retaliatory adverse job references. (Doc. 27).

Conard appealed and some two years later, in August of 2018, the Court of Appeals remanded this case for further consideration of Conard's retaliation claim finding that: "While significant time passed between Conard's earlier complaint and the alleged retaliation, there is no bright line rule for the time that may pass between protected speech and what constitutes actionable retaliation." Conard v. Pennsylvania State Police, 902 F.3d 178, 183 (3d Cir. 2018). Instead, the Court of Appeals noted that "Conard can attempt to show retaliation through a 'pattern of antagonism' in addition to the timing of events." Id. at 184. Further, while holding that "courts should scrutinize retaliation cases based on negative references with great care, particularly if the employer moves for summary judgment in such an action," id. at 185 n.8, the Court found that adverse job references could support a retaliation claim.

It is against this backdrop that we now consider the latest dispositive motion challenging Conard's claims. Pending before the court is the defendants' motion for summary judgement. As we have observed, the plaintiff, Kelly Conard, brought this action against the defendants, Joseph Tripp, Dennis Hile, and the Pennsylvania State Police, alleging civil rights violations stemming from her past employment with PSP. Conard alleges that the defendants violated her First Amendment rights by

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giving her negative employment references in retaliation for a lawsuit Conard brought against PSP in 2006, which resulted in her inability to obtain employment.

The defendants now move for summary judgment, arguing that Conard has not shown that any retaliatory action took place. Additionally, the defendants assert that Conard cannot prove that there was a causal connection between her protected speech and the alleged retaliatory conduct. However, after review, we find that there are genuine issues of material fact that preclude the entry of summary judgment against Tripp.¹ Accordingly, for the reasons set forth below, we will recommend that the defendants' motion for summary judgement be denied as to Defendant Tripp.

II. BACKGROUND

Kelly Conard was a Pennsylvania State Police employee for seventeen years as a 9-1-1 dispatcher, until she left PSP in 2002 to move to Texas with her husband for his military deployment. (Doc. 81, ¶¶ 1-7). From 1997 to 2002, Joseph Tripp was Conard's supervisor at PSP. (Doc. 81-1, at 42-43). During this time, Conard had a record of commendable and satisfactory personnel evaluations signed by Tripp. (Doc. 86-5, Ex. E, at 2-15). Specifically, her evaluation from January 2002 noted that she had thorough knowledge of relevant job information; continued to exceed standards set by the department; wrote clearly and spoke articulately; worked steady

¹ Conard concedes summary judgment as to Defendants Hile and PSP. (Doc. 86, at 4).

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midnights and was capable of working with minimal supervision; and maintained a positive working relationship with other staff members. (Id., at 7-9). This evaluation, performed by Defendant Tripp, noted overall that Conard "continues to do good work." (Id., at 9). However, Conard was also placed on sick leave restriction during this time, as her evaluations noted that her sick leave usage was excessive. (Doc. 81, ¶ 5; Doc. 86-5, at 8).

Conard returned from Texas in 2004 and reapplied for her position with PSP. (Doc. 81-1, at 36). After the initial interview, PSP told Conard she would be hired subject to a background check; however, after the background check took place, PSP decided not to offer her employment. (Id., at 57). Conard believed that negative reviews from Tripp, and her other supervisor Dennis Hile, resulted in PSP rejecting her application for employment. (Id., at 58). Conard brought suit against PSP and her supervisors in 2006, alleging that the rejection of her application was discriminatory, and that negative reviews from Tripp and Hile were made in retaliation for disagreements they had with Conard when she worked at PSP. (Doc. 81, ¶¶ 9-10). Ultimately, this 2006 lawsuit was dismissed. (Id.).

Beginning in 2008, Conard attempted to obtain employment numerous times but was denied employment each time. (Doc. 81-1, at 60). In 2014, Conard began to inquire into the reasons why her applications had been denied, and she was told it was because the employers received negative references. (Id., at 74). Specifically,

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Conard asserts that potential employers were told that Conard had attendance issues, absence issues, had filed a lawsuit against them, and that she was not eligible to return to work with PSP. (Doc. 86, at 8-10; Doc. 86-1, at 2-4). Conard asserts that these negative reviews were given by Tripp in retaliation for the lawsuit. (Doc. 81-1, at 103-104).

As part of her reference check, beginning in 2005 and again in 2011, 2013, and 2014, Conard hired Allison & Taylor reference check company to investigate the references she was getting from PSP. (Doc. 81, ¶ 34; Doc. 81-6, at 10-34). The 2005 report indicated that Tripp made negative comments about Conard, specifically about her use of sick leave, inability to get along with coworkers, and dependability, and stated that he would not re-hire her. (Doc. 81-6, at 13-15). Additionally, the 2011, 2013, and 2014 reports indicated that Tripp directed the caller to HR or to Conard's other supervisors. (*Id.*, at 22, 26, 33). In addition, Conard received several responses from employers who had denied her employment, which cited negative references from PSP as their reason for denying her employment. (Doc. 81-1, at 144-46).

Finally, in 2015, Conard hired John DiPietro of JDI Investigations to investigate the negative references being given to potential employers, as well as to serve the current lawsuit on Tripp. (Doc. 81, ¶ 29). DiPietro asserted that over the course of his investigation, he found potential employers of Conard who declined to

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hire Conard as a result of negative references given by Tripp and PSP. (Doc. 86-1, at 3-7). Additionally, when DiPietro served the lawsuit on Tripp and asked what the lawsuit was about, Tripp commented to DiPietro that “this is round two,” and asked DiPietro if he had ever met Conard. (Doc. 81, ¶ 30; Doc. 81-5, at 4). In his investigatory report, DiPietro noted his impression that “[i]t is clearly personal for [] Tripp.” (Doc. 86-1, at 4). DiPietro stated his opinion that Tripp’s actions and comments “would deter anyone from hiring [Conard].” (Doc. 86-2, at 2). He further indicated that he later denied Conard’s application to work for JDI Investigation’s open clerical position in 2015 because of the comments Tripp had made to him. (*Id.*)

Conard filed the instant action against Tripp, Hile, and PSP on February 24, 2015, alleging violations of her First and Fourteenth Amendment rights. (Doc. 1). The defendants filed a motion to dismiss the complaint on August 10, 2015, which was granted on May 24, 2016. (Docs. 10, 33). The plaintiff appealed, and two years later on August 28, 2018, the Third Circuit Court of Appeals reversed and remanded the case to the District Court for further proceedings on Conard’s First Amendment claim. (Docs. 43, 44). The case was then referred to the undersigned for further pretrial proceedings. (Doc. 45).

The defendants filed the instant motion for summary judgement on February 28, 2020, arguing that Conard has not provided any evidence to show that Tripp, Hile, or PSP took any retaliatory action against her. (Doc. 79). The motion has been

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fully briefed and is ripe for resolution. (Docs. 80, 86, 87). For her part, Conard concedes summary judgment as to Hile and PSP, and therefore, we recommend that summary judgment be granted as to these defendants. However, while it is a close case, we find that there remain genuine issues of material fact that preclude summary judgment as to Defendant Tripp on Conard's First Amendment retaliation claim. Accordingly, for the reasons set forth below, we will recommend that the defendants' motion for summary judgment be denied as to Defendant Tripp.

III. DISCUSSION

A. Summary Judgement Standard of Review

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In evaluating a motion for summary judgment, a court must determine "whether the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact and whether the moving party is therefore entitled to judgment as a matter of law." Macfarlan v. Ivy Hill SNF, LLC, 675 F.3d 266, 271 (3d Cir. 2012) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). A disputed issue is only "genuine" if there is a sufficient evidentiary basis upon which a reasonable factfinder could find for the non-moving party. Kaucher v. Cnty. of Bucks, 455 F.3d 418, 423 (3d Cir. 2006) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

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A factual dispute is “material” only if it could affect the outcome of the suit under the governing law. Doe v. Luzerne Cnty., 660 F.3d 169, 175 (3d Cir. 2011) (citing Gray v. York Papers, Inc., 957 F.2d 1070, 1078 (3d Cir. 1992)). The Court is not tasked with resolving disputed issues of fact, but only with determining whether there exist any factual issues that must be tried. Anderson, 477 U.S. at 247-49.

In considering a motion for summary judgment, a court must view the evidence in the light most favorable to the non-moving party. Macfarlan, 675 F.3d at 271; Bouriez v. Carnegie Mellon Univ., 585 F.3d 765, 770 (3d Cir. 2009). Where there exist factual issues that cannot be resolved without a credibility determination, the court must credit the non-moving party’s evidence over that presented by the moving party. Liberty Lobby, 477 U.S. at 255. However, if there is no factual issue presented, and if only one reasonable conclusion could arise from the record with respect to the potential outcome under the governing law, the court must award summary judgment in favor of the moving party. Id. at 250.

The court must review the entire record, but in doing so must take care to “disregard all evidence favorable to the moving party that the jury is not required to believe.” Reeves v. Sanderson Plumbing Products, 530 U.S. 133, 150-51 (2000). The task for the court is to examine “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Liberty Lobby, 477 U.S. at 251-52. In

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considering this evidence, we note that “a single, non-conclusory affidavit or witness’s testimony, when based on personal knowledge and directed at a material issue, is sufficient to defeat summary judgment.” Paladino v. Newsome, 885 F.3d 203, 209 n. 34 (3d Cir. 2018) (quoting Lupyan v. Corinthian Colleges, Inc., 761 F.3d 314, 320 (3d Cir. 2014)). This principle of the rules governing summary judgment holds true “even where . . . the information is self-serving.” Id. (citing Lupyan, 761 F.3d at 321 n.2).

It is against these legal benchmarks that we assess the instant motion for summary judgment.

B. The Defendants’ Motion for Summary Judgment Should BE Granted with Respect to Defendants Hile and PSP But Denied as to Defendant Tripp.

As we have explained, Conard asserts a First Amendment retaliation claim against Tripp, alleging that he provided negative references to her potential employers because of the 2006 lawsuit that she filed against him and PSP. To state a First Amendment retaliation claim, Conard must prove three elements: (1) that she engaged in constitutionally protected speech, (2) there was retaliatory action sufficient to deter a person of ordinary firmness from exercising her constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action. Mirabella v. Villard, 853 F.3d 641, 649 (3d Cir. 2017) (quoting Thomas v. Independence Twp., 463 F.3d 285, 296 (3d Cir. 2006)). On this score, it

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is undisputed that Conard meets the first element of a retaliation claim, as it is well-settled that filing a lawsuit constitutes protected speech under the First Amendment. See Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997); Lakkis v. Lahovski, 994 F.Supp.2d 624, 636 (M.D. Pa. 2014). Additionally, as discussed below, we find that there are genuine disputes of material fact as to the remaining elements of the plaintiff's claim.

With respect to the second element, a First Amendment retaliation claim is actionable when the alleged retaliatory action is sufficient to deter a person of ordinary firmness from exercising her constitutional rights. This "deterrence threshold" is satisfied by all but truly *de minimis* violations. O'Connor v. City of Newark, 440 F.3d 125, 128 (3d Cir. 2006). Additionally, while an act may be individually *de minimis*, it may still be actionable if the plaintiff can show that it is part of "a campaign of harassment that is sufficiently substantial in its cumulative effect." Alers v. City of Philadelphia, 919 F.Supp.2d 528, 554 (E.D. Pa. 2013). On this score, the Court of Appeals in this case found that negative employment references can constitute retaliatory action in some cases, stating that: " 'First Amendment retaliation claims are always individually actionable, even when relatively minor' and that the deterrence threshold to chill a plaintiff from exercising her First Amendment rights by reason of the defendant's conduct for such a claim is 'very low.' " Conard v. Pennsylvania State Police, 902 F.3d 178, 185 (3d Cir. 2018)

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(quoting O'Connor, 440 F.3d at 127-28). The Court of Appeals has cautioned, however, that in such cases, the First Amendment claim should be “scrutinized with great care.” Conard v. Pennsylvania State Police, 902 F.3d 178, 184 & n.8 (3d Cir. 2018).

Here, while we regard this as a close case, we find that Conard has presented evidence from which a factfinder could conclude that Tripp engaged in retaliatory action sufficient to deter her from exercising her constitutional rights. The defendant argues there is no evidence he ever spoke to a potential employer, and thus, no retaliatory action took place because he did not give Conard a negative employment reference. However, there are several pieces of evidence in the record that cast doubt on this assertion and, at a minimum, create a disputed material issue of fact in this case. First, the reports from Alison & Taylor reference company indicate that in 2005, Tripp made negative comments about Conard. Tripp reportedly stated he would not re-hire Conard because of her excessive use of sick leave, as well as problems with dependability, poor relationships with co-workers, and her inability to take constructive criticism. Though these comments were made before the 2006 lawsuit, and subsequent reference checks by Alison & Taylor resulted in Tripp directing them to HR, they are similar to the negative reviews potential employers cited when denying Conard employment in the years following the lawsuit.

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The reference checks also raise the question of Conard's positive performance reviews as compared to the negative references she received. Conard had commendable or satisfactory performance reviews signed by Tripp in 1998, 1999, 2000, and 2001, and these performance reviews included comments such as "ratee maintains a positive working relationship with members of the station" or that "ratee's work continues to exceed standards set by the department." While Conard's sick leave use is mentioned in the reports, it is often described as only a minor problem within a greater positive performance review. Thus, the 2005 Alison & Taylor report indicates that Tripp made comments that do not align with Conard's performance reviews that he himself signed. The rejection letters from potential employers also highlight the discrepancies between the performance reviews Conard received and the recommendations later given to potential employers.

Additionally, Tripp did, in fact, make negative comments to DiPietro when served with the instant lawsuit. While the defendant argues these comments are *de minimis*, DiPietro claims he denied Conard employment at JDI Investigations based on Tripp's comments. Additionally, DiPietro described Tripp's attitude as "hostile towards Conard," and that the lawsuit was "personal for [] Tripp." Thus, Tripp's comments, whether *de minimis* or not, could lead a juror to conclude that Tripp's comments were part of a larger pattern of retaliatory action, which would be substantial in its cumulative effect in that if these same comments were made to

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other potential employers, it may have discouraged them from employing Conard as well. Acknowledging that it has been held that “Conard can attempt to show retaliation through a ‘pattern of antagonism’ in addition to the timing of events” Conard v. Pennsylvania State Police, 902 F.3d 178, 184 (3d Cir. 2018), this evidence of a longstanding hostility toward Conard on Tripp’s part may, standing alone, be sufficient to satisfy this element of Conard’s claim.

Conard has also offered evidence that a potential employer spoke directly with Tripp, and that Tripp’s comments led to the employer, Ms. O’Connor, refusing to hire Conard. According to DiPietro, he conducted an interview with Ms. O’Connor in 2015 as part of a larger inquiry into employers who denied Conard employment and their reasons for doing so.² Ms. O’Connor allegedly stated that after Conard applied for employment at O’Connor’s retail business, she called Conard’s references and spoke directly with Tripp, who gave Conard a negative reference. This reference led to O’Connor denying Conard’s application for employment. Thus,

² The defendant argues this letter should be dismissed as hearsay. While there may ultimately be force to a hearsay objection, the Supreme Court of the United States has made clear that the nonmoving party’s evidence is not required to be in a form that would be admissible at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Rather, “Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves.” Id. Accordingly, we may consider DiPietro’s letter, which details his investigation and interview with Ms. O’Connor, while recognizing that this element of Conard’s proof could fail at trial if she is unable to produce Ms. O’Connor as a witness.

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this assertion in DiPietro's letter directly refutes the defendant's claim that he never spoke with any potential employers.

Finally, Conard's performance reviews cast doubt on the veracity of the negative employment references that she received from PSP. Conard has provided evidence that employers denied her employment based on references from PSP detailing her history of tardiness or sick leave issues—issues Tripp had with Conard. However, aside from these issues, Conard received outstanding and commendable performance reviews from Tripp from 1999 to 2002. These performance reviews contained positive assessments such as "ratee's work continues to exceed standards set by the department," and "ratee maintains a positive working relationship with members of the station." Accordingly, there seem to be discrepancies between her performance reviews and the negative references she received from PSP and Tripp. Further, we are constrained to note that Conard was able to obtain employment with the Wichita County Sheriff's Department in Wichita Falls, Texas, following her retirement from PSP in 2002, (Doc. 81, ¶ 8; Doc. 86-1, at 3), which further casts doubt on the veracity of the negative references she received following the 2006 lawsuit. Thus, in our view, a reasonable juror could conclude from this evidence that the references were retaliatory, rather than an accurate assessment of Conard's past work with PSP.

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In addition, we conclude that there are disputed factual issues regarding the causal connection between Conard's protected speech and Tripp's retaliatory conduct, such that summary judgment would be inappropriate. As we have explained, to demonstrate a causal link between the constitutionally protected conduct and the retaliatory action, the protected activity must be a substantial or motivating factor for the alleged retaliatory act. Carter v. McGrady, 292 F.3d 152, 158 (3d Cir. 2002). This causal link requires a showing of either an unusually suggestive proximity in timing between the protected activity and the alleged retaliation, or, if the timing is not suggestive, an intervening pattern of antagonism. Krouse v. American Sterilizer Co., 126 F.3d 494, 503 (3d Cir. 1997). However, the plaintiff may show that the trier of fact should infer causation from the record as a whole. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 278 (3d Cir. 2000). Finally, in this case, the Court of Appeals has emphasized that there is no "bright line rule" with respect to the time that may pass between the plaintiff's protected speech and an actionable retaliatory act. Conard, 902 F.3d at 183 (citing Coszalter v. City of Salem, 320 F.3d 968, 977 (9th Cir. 2003)).

On this score, the defendant claims that even if this court finds that he gave Conard negative employment references that constitute retaliatory action, there is no evidence of a causal connection between the negative references and Conard's 2006 lawsuit. Specifically, the defendant contends that the only negative statements he

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made were before the 2006 lawsuit, that the lapse in time between filing the lawsuit and the alleged negative comments is too great, and that the same action would have been taken regardless of Conard's protected activity. We disagree.

Here, the evidence indicates that while Tripp made negative comments to Allison & Taylor in 2005, before the 2006 lawsuit, the comments closely resemble the explanations given to Conard by employers who denied her employment in the years following the lawsuit—mainly comments concerning sick leave abuse and tardiness. However, as we have noted, Tripp's evaluations of Conard from 1999-2002 reflect outstanding and commendable performance reviews, where Conard was described as exceeding department standards, working well with other staff, and displaying thorough job knowledge and skills. Further, Conard was able to obtain employment with the Wichita County Sheriff's Department in Wichita Falls, Texas following her retirement from PSP in 2002. (Doc. 81, ¶ 8; Doc. 86-1, at 3).

Additionally, Tripp made negative comments about Conard to DiPietro in 2015, comments DiPietro described as hostile towards Conard and personal to Tripp. Further, there is evidence that DiPietro's investigation revealed another employer who allegedly received negative comments about Conard from Tripp in 2015, which resulted in Conard being denied employment. Thus, the discrepancy between the performance evaluations and the reviews received by employers, as well as Tripp's

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negative comments in 2015, could lead a juror to conclude that a causal connection exists between Tripp's retaliatory action and Conard's protected activity.

While the temporal gap between Conard's First Amendment activity and Tripp's allegedly retaliatory conduct is significant and is measured in years rather than weeks or months, as we have noted, there is no bright line rule limiting the length of time that may pass between a plaintiff's protected speech and an actionable retaliatory act by a defendant. While, in this case, there is no particular event with suggestive proximity in timing to demonstrate a causal connection, the evidence in the record could suggest a pattern of antagonism on Tripp's part. In determining whether a pattern of antagonism exists, the court should look for actual antagonistic conduct or animus in the intervening period between the protected activity and the retaliation. Flanders v. Dzugan, 156 F.Supp.3d 648, 673 (W.D. Pa. 2016). This antagonistic conduct can take the shape of a deteriorating relationships between the two parties. Id. The court may also consider remarks or comments by the defendant that would suggest a retaliatory motive. Id. at 674. Additionally, courts have suggested that other types of circumstantial evidence may demonstrate a pattern of antagonism, such disparate treatment under similar circumstances, or inconsistencies in explanations of why the alleged retaliatory action took place. Lauren v. DeFlaminis, 480 F.3d. 259, 269-71 (3d Cir. 2007). Finally, and significantly, the Third Circuit has emphasized that jurors are in a unique position to

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judge the credibility of witnesses in assessing the existence of a causal link. Marra v. Philadelphia Hous. Auth., 497 F.3d 286, 302 (3d Cir. 2007).

Here, a reasonable juror could find that a causal connection exists between Tripp's retaliatory actions and Conard's protected activity. First, Tripp's comments to DiPietro indicate a retaliatory motive. Specifically, Tripp made a comment that the current suit was "round two," and DiPietro noted his overall hostile attitude toward Conard in his interaction, reporting that the suit was "personal" for Tripp. This evidence, coupled with the inconsistencies between the positive performance reviews given by Tripp and the negative references given to employers, could lead a factfinder to conclude that Tripp had a retaliatory motive toward Conard because of the 2006 lawsuit. Thus, considering all of the evidence in the record, we find that a genuine dispute of material fact exists as to Tripp's retaliatory motive and the causal connection between Conard's protected activity and Tripp's allegedly retaliatory actions, such that summary judgment would be inappropriate here.

Finally, the defendant claims that the same action—the negative reemployment references—would have been taken regardless of the 2006 lawsuit because Tripp's comments about sick leave were accurate. While this may be true, this speculative assertion alone cannot support the motion for summary judgment, as, during the summary judgment phase, all justifiable inferences are to be drawn in the nonmovant's favor. Wharton v. Danberg, 854 F.3d 234, 241 (3d Cir. 2017).

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Notably, Conard was not terminated from PSP, nor did she leave on unfavorable terms. Rather, she ended her employment with PSP when she retired for personal reasons, obtained employment when she moved to Texas, and was considered for rehire upon her return to Pennsylvania. Moreover, considering the positive performance reviews that Tripp gave Conard from 1999-2002, where he indicated that her overall job performance was either commendable or outstanding, the inference can be drawn that, absent the 2006 lawsuit, potential employers would have been informed of her overall positive work history and not just her excessive use of sick leave.

In sum, the plaintiff has provided sufficient evidence from which a reasonable juror could find in her favor on the First Amendment retaliation claim. While this evidence is hotly disputed by Defendant Tripp, this dispute does not eliminate an issue of fact for trial. Rather, it defines questions which must be determined at trial. Given this sharply focused factual dispute, and resolving all disputes in favor of the plaintiff as we must do at this stage of the litigation, we conclude that these disputed issues of fact preclude summary judgment with respect to Defendant Tripp. Accordingly, we recommend that summary judgment be denied as to Defendant Tripp.

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IV. RECOMMENDATION

Accordingly, for the foregoing reasons, IT IS RECOMMENDED THAT the defendants' motion for summary judgment (Doc. 79) be GRANTED as to Defendants PSP and Hile, and that the motion be DENIED as to Defendant Tripp.

The parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 18th day of August 2020.

S/ Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge

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